



IN THE CIRCUIT COURT OF COVINGTON
EX PARTE
LARYIE EARL JONES,
DEFENDANT,
V.
STATE OF ALABAMA,
PLAINTIFF.

CASE No. CC-2003-187-418-419
2004-347

MOTION FOR CHANGE OF PLACE OF TRIAL OR
DISMISS THE INDICTMENT
COME NOW THE DEFENDANT LARYIE EARL JONES, PRO, SE,
MOVE THIS HONORABLE COURT FOR CHANGE OF PLACE OF
TRIAL, AND AS THEREFORE STATES THE FOLLOWING
GROUNDS:

1. ON OR ABOUT SEPTEMBER 17, 2002, THE DEFENDANT WERE ARRESTED
AND CHARGE WITH POSSESSION OF DRUG PARAPHERNALIA A CLASS
(A) MISDEMEANOR, AND BECAUSE OF RESIDUE IN THE PARAPHERNALIA
HE WAS CHARGE WITH A POSSESSION OF CONTROLLED SUBSTANCE
IN CASE NUMBER CC-2003-187.

2. ON OR ABOUT MAY 14, 2003, THE DEFENDANT WERE ARRESTED
AND CHARGE WITH POSSESSION OF DRUG PARAPHERNALIA A CLASS
(A) MISDEMEANOR, AND BECAUSE OF RESIDUE IN THE PARAPHERNALIA
HE WAS CHARGE WITH A POSSESSION OF CONTROLLED SUBSTANCE
IN CASE NUMBER CC-2003-418.

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ON OR ABOUT JUNE 11, 2003, THE DEFENDANT WERE ARRESTED AN
CHARGE WITH POSSESSION OF DRUG PARAPHERNALIA A CLASS (A) MIS
DEMEANOR, AND BECAUSE OF RESIDUE IN THE PARAPHERNALIA HE W
CHARGE WITH A POSSESSION OF CONTROLLED SUBSTANCE, IN CASE
NUMBER CC-2003-419.

ON OR ABOUT JULY 14, 2004, THE DEFENDANT WERE ARRESTED
AND CHARGE WITH POSSESSION OF DRUG PARAPHERNALIA A CLASS (A)
MISDEMEANOR, AND BECAUSE OF RESIDUE IN THE PARAPHERNALIA HE
WAS CHARGE WITH A POSSESSION OF CONTROLLED SUBSTANCE IN
CASE NUMBER CC-2004-347.

IN CASES NUMBERS CC-2003-187-418-419, THE DEFENDANT
WAS SERVED 20 MONTHS, IN CASE NUMBER CC-2004, THE
DEFENDANT HAS ^{SERVED} 13 MONTHS WITH AN EXCESSIVE \$200,000
BAIL, AND NO BAIL IN CASES CC-2003-187-418-419.
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THE DEFENDANT REQUEST FOR CHANGE OF PLACED TRIAL TO THE NEAR-
BY COUNTY FREE FROM PREJUDICE, THIS COURT HAS SHOWS
THAT AN UNFAIR AND IMPARTIAL TRIAL AND AN UNBIASED
VERDICT CANNOT BE REASONABLY EXPECTED IN THIS COUNTY IN
WHICH THE DEFENDANT IS TO BE TRIAL, BECAUSE IN CASE
CC-2003-187 THERE IS 36 MONTHS DELAY PREJUDICE THE
DEFENDANT, IN CASE CC-2003-418 THERE IS 24 MONTHS DELAY
PREJUDICE THE DEFENDANT, IN CASE CC-2003-419 THERE IS
13 MONTHS DELAY PREJUDICE THE DEFENDANT IN CASE
CC-2004-347 THERE IS 13 MONTHS PREJUDICE THE

DEFENDANT, WHICH VIOLATED THE DEFENDANT CONSTITUTION
 RIGHT TO DUE PROCESS OF LAW. NORRIS V. FRAME, LA. Pa.
 1978, 585 F.2d 1183.

1. DUE PROCESS REQUIRES THAT PRETRIAL DETAINEE NOT BE
 PUNISHED. SCHALL V. MARTIN, N.Y. 1984, 104 S.Ct. 2403, 46
 U.S. 253, 81 L.Ed.2d 207.

1. NO PRETRIAL DETAINEE SHOULD BE HELD IN THE SAME CELL OR
 CELL BLOCK OF COUNTY JAIL WITH ANY PERSON WHO HAS BEEN
 CONVICTED OF A CRIME AND SENTENCED. ALBERTI V. SHERIFF
 OF HARRIS COUNTY, TEXAS, D.C. TEX. 1975, 406 F.SUPP. 649.

1. III.S.H.A. CH. 110A. 57-604(A)(3), PROVIDING THAT "A DEFENDANT
 SHALL NOT BE HELD IN JAIL OR TO BAIL DURING THE PENDENCY
 OF AN APPEAL BY THE STATE, OR OF A PETITION OR APPEAL
 BY THE STATE UNLESS THERE ARE COMPELLING REASONS FOR
 HIS CONTINUED DETENTION OR BEING HELD TO BAIL. U.S. EX
 1. FITZGERALD V. JORDAN, C.A. 111. 1984, 747 F.2d 1006.

STATE LACKS THE AUTHORITY TO SUBJECT PRETRIAL DETAINEES
 TO THE SAME PUNISHING CIRCUMSTANCES AS CONVICTED PERSON;
 IMPOSITION OF PUNISHMENT WITHOUT CONVICTION DEPRIVES
 THE ACCUSED OF DUE PROCESS. ALBERTI V. SHERIFF OF HARRIS
 COUNTY, TEXAS, D.C. TEX. 1975, 406 F. SUPP. 649.

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EXHIBIT

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1. THIS CLAUSE PROTECTS PRETRIAL DETAINEES FROM ABUSIVE TREATMENT, AND DECISIONS APPLYING CRUEL AND UNUSUAL PUNISHMENT CLAUSE SERVE AS USEFUL ANALOGIES. PATZIG V. O'NEIL C.A. Pa. 1978, 577 F.2d 841.
2. AN INDIVIDUAL'S CONSTITUTIONAL RIGHTS, RELATIVE TO DETAINMENT IN A HOUSE OF DETENTION, MAY NOT BE SACRIFICED ON THE GROUND THAT THE CITY HAS OTHER AND MORE PRESSING PRIORITIES, SINCE TO DO SO WOULD BE TO DISCRIMINATE GRAVITOUSLY AGAINST POOR PERSON WHO CANNOT AFFORD BAIL. THEM V. MALCOLM, C.A. N.Y. 1975, 527 F.2d 1041.
3. ALTHOUGH EIGHTH AMENDMENT HAS NO APPLICATION TO PRETRIAL DETAINEES RETAIN CONSTITUTIONAL RIGHTS DERIVED FROM THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT. ROBINSON V. MOSES, N.D. IND, 1986, 644 F. SUPP. 97.
4. THIS CLAUSE FORBIDS PUNISHMENT OF PERSON HELD IN CUSTODY WAITING TRIAL. ODOM V. TRIPP. D.C. MO. 1983, 575 F. SUPP. 491.
5. WHETHER IMPOSITION OF PUNISHMENT ON PRETRIAL DETAINEES CONFINED IN COUNTY JAIL WAS VIOLATIVE OF THEIR RIGHTS UNDER AMEND (8) WAS QUESTIONABLE, BUT IT WAS CLEARLY A VIOLATION OF THEIR RIGHTS UNDER THIS CLAUSE AND EQUAL PROTECTION CLAUSE OF THIS AMENDMENT TO SUBJECT THEM TO ANY FORM OF PUNISHMENT FOR CONFINEMENT BEYOND

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THAT WHICH WAS REASONABLY NECESSARY TO INSURE THEIR PRESENCE AT TRIAL. VEST V. LUBBOCK COUNTY COM'RS COV. D.C. TEX. 1977, 444 F. SUPP. 824, PRETRIAL DETAINEE IS ENTITLED TO PROTECTION FROM CRUEL AND UNUSUAL PUNISHMENT AS MATTER OF DUE PROCESS. OWEN-EL V. ROBINSON D.C. Pa. 1978, 442 F. SUPP. 1368.

6. BEFORE PRETRIAL DETAINEES MAY BE SUBJECTED TO LOSS OF PRIVILEGE FOR MORE THAN ONE DAY, ISOLATION, REDUCED DIET, OR LOSS OF ALL PRIVILEGE THERE MUST BE: (1) HEARING BEFORE IMPARTIAL OFFICER NOT INVOLVED IN THE TRANSACTION OR IN INVESTIGATION OF THE CHARGES, (2) REASONABLE ADVANCE ORAL OR WRITTEN DESCRIPTION OF THE CHARGES IN ADVANCE OF A HEARING, (3) GENERAL RIGHT TO CONFRONT AND PRESENT WITNESSES AT HEARING, (4) RIGHT TO CONFRONT AND QUESTION ACCUSERS AND (5) SHORT, WRITTEN STATEMENT OF CONCLUSIONS COMPOSED BY HEARING OFFICER AND GIVEN TO INMATES OF MILWAUKEE COUNTY JAIL V. PETERSON, D.C. WIS. 1973, 353 F. SUPP. 1157.

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7. U.S.A-CONST. ART. I-12, PROVIDING THAT ALL PERSONS SHALL BE AVAILABLE BY SUFFICIENT SURETIES, EXCEPT PERSONS CHARGED WITH A CAPITAL OFFENSE, WHERE PROOF IS EVIDENT OR PRESUMPTION OF GREAT, ETC, DOES NOT DENY A DEFENDANT WHO IS CHARGED WITH A CAPITAL OFFENSE, IN CASE WHERE PROOF IS EVIDENT OR PRESUMPTION OF GREAT OF DUE PROCESS OF LAW, OR EQUAL PROTECTION OF THE LAW AND PRIVILEGES AND IMMUNITIES GUARANTEED BY THE CONSTITUTION AND OF LAW UNITED STATES. Mc CARDALL

8. THE DRUG PARAPHERNALIAS ALL FOUR WERE SENT TO OPEN LABAMA TO C. RANDALL CLARK, PH.D. MR. MARK ODOM IS THE ONE WHO SENT THEM ON MAY 11, 2005. DEFENDANT ENCLOSE A COPY OF THE REPORT OF THE ANALYSIS, IN THE REPORT OF THE RESULTS, THE EVIDENCE OF THESE CASE WAS TO BE CHARGE ALL MISDEMEANORS ONLY DRUG PARAPHERNALIAS, BECAUSE ^{THERE} ARE NOT ANY DETECTIBLE AMOUNT OF CONTROLLED SUBSTANCE TO SUPPORT A CONVICTION

WHEREFORE THE DEFENDANT REQUESTS UPON THIS MOTION THAT THE COURT PERMIT A RULE 16.4 PROTECTIVE ORDER AND CONDITIONS OF DISCOVERY TO MAKE SUCH SHOWING IN A PART OF THE INDICTMENT IN THE FORM OF A WRITTEN STATEMENT TO BE INSPECTED BY THE JUDGE ALONE ALSO PERMIT A RULE 16.3 CONTINUING DUTY TO DISCLOSE ALL CONTROLLED SUBSTANCE CHARGES, AND REMAND THE PARAPHERNALIAS TO THE DISTRICT COURT OR CHANGE PLACE OF TRIAL DO TO PREJUDICE FOR DELAY DEFENDANT PRAYS THAT THIS HONORABLE COURT TAKE ACTION IN THIS MATTER AND PLEADING AND GRANT HIS MOTION AND A HEARING BE HELD AS A MATTER OF LAW AND AN ORDER ANSWER NAMED AS THE PLAINTIFF BE GIVEN AT THE EARLIEST POSSIBLE TIME. RESPECTFULLY SUBMITTED THIS THE 11 JULY 2005

DECLARE UNDER PENALTY OF PERJURY THAT THE ABOVE PLEADING IS TRUE AND CORRECT. 8-11-05 Gary Earl Jones